

Secretariat of the Commission for Environmental Cooperation

Overall Plan to Develop a Factual Record

| | |
|---------------------------|--|
| Submission I.D.: | SEM-00-006 (Tarahumara) |
| Submitter: | Comisión de Solidaridad y Defensa de los Derechos Humanos A.C. |
| Party: | United Mexican States |
| Date of this plan: | 15 May 2003 |

Background

On 9 June 2000, the Comisión de Solidaridad y Defensa de los Derechos Humanos A.C. (hereinafter “the Submitter”), acting on behalf of various indigenous communities of the Sierra Tarahumara, made a submission to the Secretariat of the Commission for Environmental Cooperation (CEC) under Article 14 of the North American Agreement on Environmental Cooperation (NAAEC). The Submitter asserts that Mexico has failed to effectively enforce its environmental law by denying access to environmental justice to indigenous peoples of the Sierra Tarahumara. In particular, it asserts a persistent pattern of failing to effectively enforce environmental law with respect to the citizen complaint process, alleged environmental crimes and other alleged violations with respect to forest resources and the environment in the Sierra Tarahumara.

The Secretariat recommended the development of a factual record to the Council on 29 August 2002, with regard to the Submitter’s assertions on the alleged failure to effectively enforce the environmental law with respect to citizen complaints and the prosecution of probable environmental crimes, in cases presented by the indigenous peoples and communities of the Sierra Tarahumara referenced in the submission.

On 22 April 2003, the Council decided unanimously in Council Resolution 03-04 to instruct the Secretariat to prepare a factual record on the submission.

Under Article 15(4) of the NAAEC, in developing a factual record, “the Secretariat shall consider any information furnished by a Party and may consider any relevant technical, scientific or other information: (a) that is publicly available; (b) submitted by interested nongovernmental organizations or persons; (c) submitted by the Joint Public Advisory Committee; or (d) developed by the Secretariat or by independent experts.”

Overall Scope of the Fact Finding:

The submission asserts the alleged failure to effectively enforce Articles 169, 189, 190 through 193, 199 and 202 of the General Law of Ecological Balance and Environmental Protection (*Ley General de Equilibrio Ecológico y de Protección al Ambiente*—

LGEEPA), as well as Articles 416, 418 and 419 of the Federal Criminal Code (*Código Penal Federal*—CPF), with respect to citizen complaints and the prosecution of probable environmental crimes in the cases presented by indigenous peoples and communities of the Sierra Tarahumara referenced in the submission.

To prepare the factual record, the Secretariat will gather and develop information relevant to the facts concerning:

- i) the cases submitted by the indigenous peoples and communities of the Sierra Tarahumara referenced in the submission;
- ii) Mexico's enforcement of LGEEPA Articles 169, 189, 190 through 193, 199 and 202 and CPF Articles 416, 418 and 419, with respect to those cases; and
- iii) the effectiveness of Mexico's enforcement of those provisions in those cases.

Overall Plan:

Consistent with Council Resolution 03-04, execution of the overall work plan will begin on 2 June 2003. All other stated dates are based on best estimates. The overall plan is as follows:

- Through public notices or direct requests for information, the Secretariat will invite the Submitter; JPAC; representatives of indigenous peoples and communities of the Sierra Tarahumara; the local, state and federal authorities; and the general public, to submit information relevant to the scope of fact-finding outlined above. The Secretariat will explain the scope of the fact finding, providing sufficient information to enable interested nongovernmental organizations or persons or the JPAC to provide relevant information to the Secretariat (section 15.2 of the *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*). **[Mid-June 2003]**
- The Secretariat will request information from Mexican federal, state and local authorities, as appropriate, and will consider any information provided by a Party (Articles 15(4) and 21(1)(a) of the NAAEC). **[Late June 2003]** Information will be requested relevant to the facts regarding:
 - i) the cases submitted by the indigenous peoples and communities of the Sierra Tarahumara referenced in the submission;
 - ii) Mexico's enforcement of LGEEPA Articles 169, 189, 190 through 193, 199 and 202 and CPF Articles 416, 418 and 419, with respect to those cases; and
 - iii) the effectiveness of Mexico's enforcement of those provisions in those cases.

- The Secretariat will gather relevant technical, scientific or other information that is publicly available, including from existing databases, public files, information centers, libraries, research centers and academic institutions. **[July to October 2003]**
- The Secretariat, as appropriate, will develop, through independent experts, technical, scientific or other information relevant to the factual record. **[July to October 2003]**
- The Secretariat, as appropriate, will collect relevant technical, scientific or other information for the preparation of the factual record, from interested nongovernmental organizations or persons, the JPAC or independent experts. **[July to October 2003]**
- In accordance with Article 15(4), the Secretariat will prepare the draft factual record based on the information gathered and developed. **[November 2003 to January 2004]**
- The Secretariat will submit a draft factual record to Council, and any Party may provide comments on the accuracy of the draft within 45 days thereafter, in accordance with Article 15(5). **[February 2004]**
- As provided in Article 15(6), the Secretariat will incorporate, as appropriate, any such comments in the final factual record and submit it to Council. **[March 2004]**
- The Council may, by a two-thirds vote, make the final factual record publicly available, normally within 60 days following its submission, according to Article 15(7).

Additional information

The submission, Mexico's response, the Secretariat determinations, the Council Resolution, and a summary of these are available on the Citizen Submissions on Enforcement Matters section of the CEC web site <<http://www.cec.org>>, or upon request to the Secretariat at the following address:

Secretariat of the CEC
Submissions on Enforcement
Matters Unit (SEM Unit)
393 St-Jacques St. West
Suite 200
Montreal, QC H2Y 1N9
Canada

CEC / Mexico Liaison Office:
Atención: Unidad sobre Peticiones
Ciudadanas (UPC)
Progreso núm. 3,
Viveros de Coyoacán
México, D.F. 04110
México